IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 7451 of 2005
Date of decision: 21.5.2007

Mavi Bus Service Registered, Khanna ...Petitioner

Versus

State Transport Appellate Tribunal, Punjab and another
...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. H.S. Sawhney, Senior Advocate with
Mr. B.S. Giri, Advocate, for the
petitioner.

Mr. H.S.Mattewal, Advocate General, Punjab with
Mr. N.S.Virk, Additional Advocate General, Punjab.

Mr. J.C. Marwaha, Advocate.

K.S.GAREWAL, J.

The State Transport Commissioner and Regional Transport Authorities frequently grant stage carriage permits on the basis of applications received from the State transport undertakings like Punjab Roadways and PRTC, private transport companies, transport societies and individuals transporters. The procedure that is followed is laid down in the Motor Vehicles Act, 1988 and the rules framed thereunder. At the outset,

advertisements are published in the Motor Transport Gazette Weekly, Chandigarh, inviting applications for grant of permits on certain specified routes. When applications accompanied by all relevant details and supporting documents are received, the contents of the applications are published in the above Gazette for the purpose of inviting objections. Thereafter, the State Transport Commissioner convenes a meeting to consider the grant of permits that had been advertised. During such meetings, the applicants are invited to participate and they appear before the State Transport Commissioner or the Regional Transport Authorities. The applicants who do not show up are ignored. The applicants who appear are considered but the decision is seldom announced immediately after the hearing is concluded. Orders are reserved, often for years, and when the orders are announced it is directed that they be communicated to the parties. Very often these orders are either not communicated or do not reach the concerned parties. Dissatisfied applicants come to know about the orders after passage of considerable time. Therefore, if they wish to file appeals, they are never able to do so within the prescribed period, 30 days from the date of the receipt of the order, as per rule 85 of the Punjab Motors Vehicle Rules 1989.

An illustration may help to understand the faulty procedure of announcing orders and what it leads to. Let us examine the case of Mavi Bus Service (CWP 7451 of 2005). Payal-Mohali route was advertised in the Motor Transport Gazette on December 15, 1992. Applications were invited for grant of three regular stage carriage permit with two return trips on the said route. There were 123 applicants in all including Mavi Bus Service and Punjab Roadways, Chandigarh.

The contents of the applications were published in the Motor Transport Gazette on April 15, 1993 for the purpose of inviting objections but no objections were received. Hearing of the applications was fixed for January 31, 1994. 50 applicants failed to turn up but the remaining applicants were heard on the said date. Ultimately the order was pronounced on June 28, 1996. A permit each with two return trips each was granted to Punjab Roadways, Chandigarh and Sukhvindra Bus Services Registered, Patiala. Six parties filed appeals which were decided on April 5, 2005 by the learned State Transport Appellate Tribunal.

All the appellants unanimously pleaded that the order that was pronounced on June 28, 1996 was never conveyed to them. They had come to know about the order in different manner at different times. The learned Tribunal found that the explanations given by the three appellants were satisfactory and their appeals were within limitation. However, the three appeals which were filed on February 9, 2005 were time barred as it could not be believed that these appellants had come to know about the impugned order only on January 25, 2005, after 8 years and 7 months. The Tribunal relied on a Division Bench decision of this Court in Banda Bahadur Highways Pvt. Ltd. Versus The State Transport Appellate Tribunal etc. CWP 9982 of 1996 decided on July 16, 1997. In the said case the Court had observed that it could not be believed that the writ petitioner did not learn about the decision for two years, particularly when the route was being operated. This was a pointer to the petitioner that the permit had been granted to some one else. The Tribunal relied upon this decision and dismissed the appeals as time barred.

We feel that it is the duty of the State Transport Commissioner

to communicate to all the applicants the decision taken and notify them about it. This is because an unfavourable decision can be challenged in appeal within 30 days of the order. In every case in which the parties seek a permit they are entitled to not just a fair hearing. The unsuccessful applicants are also entitled to know the reasons why the permit was granted to some one else. If the decision was taken in the presence of the parties, there can be no cavil. But when the decision is taken after 2-1/2 years, it is very difficult for all the applicants to remain vigilant and to keep a look out for the decision. It is not easy to keep a track on when it is going to be pronounced and to apply for its copy in time to file the appeal within the prescribed period.

In some of these cases, Secretary, Regional Transport Authority has also filed an affidavit pleading that the applicants who apply for the grant of stage carriage permit or apply for variation of condition of permits under Section 80 (3) of Motor Vehicles Act, 1988 shall be informed by post about the decision of Regional Transport Authority, immediately after the disposal of their applications. All such decision shall also be published in Motor Transport Gazette, Weekly, Chandigarh for the information of the applicants.

In Jaspal Singh Versus State of Punjab and others CWP 14874 of 2000 decided on August 29, 2001, a Division Bench of this Court held that in case where the order is not conveyed to the petitioner, delay in filing ithe appeal cannot be attributabed to him. Jaspal Singh's application for permit was rejected on February 9, 1991 but he filed the appeal after six years on August 29, 1997. The appeal was dismissed on the ground of delay. The judgment of the Tribunal was set aside and the matter was

remanded back to the Tribunal for a fresh decision on merits.

We may refer to some other judgments in which delay in filing appeals was condoned on the ground that the starting point of limitation was not the date of the order but the date of knowledge of the order. One such decision was rendered by the Division Bench in Majhi Express Transport Service Regd. Patiala Versus State Transport Appellate Tribunal, Punjab and others decided on October 24, 2006 and this decision was given on the basis of the Supreme Court decision in S.V.Sivaswami Servai v. Hafez Motor Transport (Firm) and others AIR 1991 Supreme Court 911. Reliance was also placed on Indian Bus Service (Regd.) Malerkotla v. State Transport Appellate Tribunal, Punjab and others CWP 3114 of 2003 decided on August 4, 2006.

In Capt. Amrit Pal Singh and others v. State Transport Appellate Tribunal, Punjab and others CWP 3544 of 2002 decided on July 15, 2002 as well this Court held that the period of limitation would commence from the date of knowledge. The date of the order was February 21, 1991 and the date of knowledge was August 23, 1995, which was when the order came to the knowledge of the party. In Amrit Pal Singh's case (supra), reliance had been placed on the judgment of the Supreme Court in the case of Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another AIR 1961 SC 1500. The Supreme Court had interpreted the provisions of proviso (b) to Section 18 (2) of the Land Acquisition Act, 1894, under which limitation was prescribed to challenge the award passed by the Collector. It was held that the limitation would start from the date of constructive communication of the order under challenge.

However, it is necessary to mention that Devinder Pal Singh-

Petitioner (CWP 18810 of 2006) and Gursher Singh-petitioner (CWP 18802 of 2006) were appellants in CA No. 519 of 2005 and CA No. 520 of 2005 before the learned State Transport Appellate Tribunal. Although the Tribunal had found that their appeals were barred by time but the Tribunal also held that in the inter-se context between them and the successful respondents, the appellants did not possess better merits. The only arguable point in their favour was that the respondent held mini bus permits whereas the appellants did not hold any permit on the date of the consideration. However, the appeals of Devinder Pal Singh and Gursher Singh had also been dismissed on the ground that they were barred by limitation.

In view of the above, it is held that the appeals filed by the petitioners were within time as they were within the prescribed period of 30 days from the date of knowledge. The order of the learned State Transport Appellate Tribunal is hereby set aside and the matter is remanded back to the Tribunal for a fresh decision of the appeals filed by the petitioners in accordance with law. The parties shall appear before the Tribunal on July 16, 2007 and the Tribunal shall decide their respective appeals within two months from that date.

(K.S. GAREWAL)
JUDGE

21.5.2007 **(AJAI LAMBA)**
prem **JUDGE**